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SENATE BILL 541

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Lynda M. Lovejoy

FOR THE INDIAN AFFAIRS COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE NMSA 1978
CONCERNING THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT
FUND; MAKING APPROPRIATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2H-1 NMSA 1978 (being Laws 2008,
Chapter 89, Section 1) is amended to read:

"7-2H-1. LEGISLATIVE FINDINGS.--

A. Native Americans have had a long history of
serving their country through active duty in the armed forces
of the United States during periods of both war and peace and
have made great sacrifices in serving their country through
active duty in the military during periods of war and peace.

B. Native American veterans domiciled ~~on~~ within
the boundaries of their tribal lands or their spouse's tribal

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1 lands during their periods of active military service may have
2 been exempt from paying state personal income taxes on their
3 military income, but may have had state personal income taxes
4 [~~improperly~~] withheld from their military income.

5 C. Native American veterans now are barred by the
6 state statute of limitations from claiming refunds of state
7 personal income taxes that may have been [~~improperly~~] withheld
8 from their military income when they were domiciled within the
9 boundaries of their tribal lands or their spouse's tribal lands
10 during the period of their active military duty, and even if
11 not barred by the statute of limitations, the passage of time
12 extending to decades will make it difficult for many Native
13 American veterans to meet strict standards of proof that they
14 are entitled to a refund of [~~improperly~~] withheld state
15 personal income taxes.

16 D. It is incumbent upon the state to ensure that it
17 was not unjustly enriched by the [~~improper~~] withholding of
18 state personal income taxes from Native American veterans who
19 were domiciled within the boundaries of their tribal lands or
20 their spouse's tribal lands during the period of their active
21 military duty, and the state should implement a feasible means
22 of refunding to Native American veterans any state personal
23 income taxes that were [~~improperly~~] withheld from military
24 [~~pay~~] income while they were domiciled within the boundaries of
25 their tribal lands or their spouse's tribal lands during the

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1 period of their active military duty."

2 Section 2. Section 7-2H-2 NMSA 1978 (being Laws 2008,
3 Chapter 89, Section 2) is amended to read:

4 "7-2H-2. [DEFINITIONS] DEFINITION.--As used in [~~this act~~:

5 A. ~~"department" means the veterans' services~~
6 ~~department;~~

7 B.] Chapter 7, Article 2H NMSA 1978, "fund" means
8 the Native American veterans' income tax settlement fund [~~and~~

9 C. ~~"secretary" means the secretary of veterans'~~
10 ~~services]."~~

11 Section 3. Section 7-2H-3 NMSA 1978 (being Laws 2008,
12 Chapter 89, Section 3) is amended to read:

13 "7-2H-3. NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT
14 FUND--CREATED--PURPOSE--APPROPRIATIONS.--

15 A. The "Native American veterans' income tax
16 settlement fund" is created as a nonreverting fund in the state
17 treasury and shall be administered by the taxation and revenue
18 department. The fund shall consist of money that is
19 appropriated or donated or that otherwise accrues to the fund.
20 Money in the fund shall be invested by the state investment
21 officer in the manner that land grant permanent funds are
22 invested pursuant to Chapter 6, Article 8 NMSA 1978. Income
23 from investment of the fund shall be credited to the fund.

24 B. The taxation and revenue department shall
25 establish procedures and adopt rules as required to administer

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1 the fund and to make settlement payments from the fund as
2 approved by the secretary of taxation and revenue.

3 C. Money in the fund is appropriated to the
4 taxation and revenue department to make settlement payments to
5 Native American veterans who were domiciled within the
6 boundaries of their tribal lands or their spouse's tribal lands
7 during the period of their active military duty and had state
8 personal income taxes [~~improperly~~] withheld from their military
9 [~~pay~~] income. Settlement payments shall include the amount of
10 state personal income taxes withheld from eligible Native
11 American veterans that have not been previously refunded to the
12 veterans and interest on the amount withheld from the date of
13 withholding computed on a daily basis at the rate specified for
14 individuals pursuant to Section 6621 of the Internal Revenue
15 Code of 1986. No settlement payments shall be made for any
16 taxable year for which a refund claim may be timely filed with
17 the taxation and revenue department, or for which an
18 application for settlement is received after December 31, 2012.
19 Money shall be disbursed from the fund only on warrant of the
20 secretary of finance and administration upon vouchers signed by
21 the secretary of [~~veterans' services~~] taxation and revenue or
22 the secretary's authorized representative. Any unexpended or
23 unencumbered balance remaining in the fund at the end of a
24 fiscal year shall not revert to the general fund.

25 D. Beginning in fiscal year 2010 and in subsequent

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1 fiscal years, not more than five percent of the fund is
2 appropriated from the fund to the taxation and revenue
3 department for expenditure in the fiscal year in which it is
4 appropriated to administer the fund. Any unexpended or
5 unencumbered balance remaining at the end of any fiscal year
6 shall revert to the fund.

7 E. Beginning in fiscal year 2010 and in subsequent
8 fiscal years, not more than five percent of the fund is
9 appropriated from the fund to the veterans' services department
10 for expenditure in the fiscal year in which it is appropriated
11 to assist in outreach and public relations and in determining
12 eligibility for settlement payments. Any unexpended or
13 unencumbered balance remaining at the end of any fiscal year
14 shall revert to the fund."

15 Section 4. Section 7-2H-4 NMSA 1978 (being Laws 2008,
16 Chapter 89, Section 4) is amended to read:

17 "7-2H-4. DUTIES OF THE SECRETARY.--

18 A. The secretary of veterans' services shall
19 conduct a study in cooperation with the taxation and revenue
20 department to determine whether Native American veterans who
21 were domiciled [~~on~~] within the boundaries of their tribal lands
22 or their spouse's tribal lands during the period of their
23 active military duty had state personal income taxes
24 [~~improperly~~] withheld from their [~~pay~~] military income and if
25 so, to determine the amount of such state personal income taxes

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1 [improperly] withheld and the number and identity of Native
2 American veterans or their survivors affected by the [improper]
3 withholding of such state personal income taxes.

4 B. The secretary of taxation and revenue and the
5 secretary of veterans' services shall promulgate rules for a
6 state program to compensate Native American veterans or their
7 survivors for state personal income taxes [improperly] withheld
8 from military income while on active military duty and
9 domiciled within the boundaries of the veteran's or the
10 veteran's spouse's tribal lands.

11 C. The secretary of taxation and revenue shall
12 report to the appropriate interim legislative committee no
13 later than October 1 of each year regarding estimates of the
14 amount of state personal income taxes [improperly] withheld
15 from the military [pay] income of Native American veterans
16 domiciled on their respective tribal lands, the number of
17 Native American veterans or their survivors affected by [the
18 improper] such withholding of state personal income taxes,
19 total expenditures from the fund for the previous fiscal year
20 and the anticipated appropriations to the fund needed to pay
21 for settlements to be entered into for the next fiscal year."

22 Section 5. APPROPRIATION.--Two million dollars
23 (\$2,000,000) is appropriated from the general fund to the
24 Native American veterans' income tax settlement fund for
25 expenditure in fiscal year 2010 and subsequent fiscal years to
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1 carry out the purposes of the fund. Any unexpended or
2 unencumbered balance remaining at the end of a fiscal year
3 shall not revert to the general fund.

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